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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/757,722 | 01/08/2001 | Bob Francis | ZL370/01001 | 8367 |
| 22884 | 7590 | 03/09/2006 | EXAMINER | |
| MIDDLETON & REUTLINGER 2500 BROWN & WILLIAMSON TOWER LOUISVILLE, KY 40202 | | | HAVAN, THU THAO | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3624 | |
| DATE MAILED: 03/09/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/757,722 | FRANCIS ET AL. | |
| | Examiner | Art Unit | |
| | Thu Thao Havan | 3624 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 December 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10, 12-23, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10, 12-23, and 25-26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Detailed Action

Response to Amendment

Claims 1-10, 12-23, and 25-26 are pending. This action is in response to the amendment received December 13, 2005.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claims 1 and 13, the phrase "can optionally" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Response to Arguments

The rejection of claims 1-10, 12-23, and 25-26 under 35 U.S.C. 102(e) as being anticipated by Friedland et al. (US patent no. 6,449,601) is maintained.

Applicant's arguments filed December 13, 2005 have been fully considered but they are not persuasive.

In response to the arguments concerning the previously rejected claims the following comments are made:

A.) Applicant alleges that the prior art made of record fails to teach a prebid can optionally include an opening prebid amount in addition to the maximum prebid amount. As previously rejected in the prior office action of June 13, 2005, this limitation is

already rejected under cancelled claim 11. Thus, the examiner disagrees with applicant's representative since Friedland teaches a prebid can optionally include an opening prebid amount in addition to the maximum prebid amount (col. 6, line 53 to col. 7, line 20). In other words, Friedland discloses a presold state that corresponds to prebid. A lot in the presold state will be sold to the current highest bidder unless a higher bid is received within some time interval. The prebid is the presold state that can optionally be sold at the highest bidder (i.e. maximum prebid amount).

B.) Applicant alleges that the prior art made of record fails to teach recording prebids in prebid database. The examiner disagrees with applicant's representative since Friedland teaches recording prebids in prebid database (col. 8, lines 51-67; col. 6, line 53 to col. 7, line 20; fig. 4). Friedland discloses The DLA auction server program stores and retrieves data from a centralized database. The centralized database contains information about ongoing and upcoming auctions (i.e the presold state that corresponds to prebid), including detailed status information that provides a computational snapshot in time of the state of all ongoing auctions, as well as information related to the lot inventories and lot sequencing for both ongoing and upcoming auctions.

With regards to the claims rejected as taught by Friedland, the examiner would like to point out that the reference teaches the claimed limitations and thus provides adequate support for the claimed limitations. Therefore, the examiner maintains that Friedland taught the claimed limitations.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Thao Havan whose telephone number is (571) 272-8111. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct-uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

TTH
3/4/2006

VINCENT MILLIN
SUPPLYING PATENT EXAMINER
TECHNOLOGY CENTER 3600

A handwritten signature in black ink, appearing to read "Vincent Millin".